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MTD 005 320254

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF	)	
	)	
DSC Ltd.	)	
1491 West Jefferson Avenue	)	
Trenton, Michigan 48183	)	ADMINISTRATIVE ORDER
	)	Docket No. R7003-5-99-003
Respondent	)	
	)	

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**I. JURISDICTION**

The United States Environmental Protection Agency, Region 5 ("EPA"), issues this Administrative Order ("Order") pursuant to Section 7003(a) of the Solid Waste Disposal Act, as amended ("RCRA" or the "Act"), 42 U.S.C. § 6973(a) ("Section 7003").

**II. INTRODUCTION**

A. In 1996, Hamlin Holdings, Inc., purchased the assets of McLouth Steel Products Corporation ("McLouth"), including assets of McLouth's properties located in Gibraltar, Michigan and Trenton, Michigan. Hamlin Holdings, Inc., assigned the assets of the Gibraltar and Trenton properties to DSC Ltd. DSC Ltd., is a corporation registered to conduct business in Michigan. DSC Ltd. is the "Respondent" in this matter.

B. Respondent has handled "solid waste" within the meaning of Section 1004(27) of the Act, 42 U.S.C. § 6903(27), at a facility known as the Gibraltar property located in Gibraltar, Michigan (the "Gibraltar Facility").

C. Based upon evidence received, EPA has determined that Respondent's handling of solid waste at the Gibraltar Facility may present an imminent and substantial endangerment to health or the environment.

D. Pursuant to Section 7003(a) of the Act, EPA has notified the State of Michigan of this action.

E. EPA hereby takes this action pursuant to Section 7003 having determined that issuance of this Order is necessary to protect health or the environment.

**III. PARTIES BOUND**

A. This Order shall apply to and be binding upon Respondent and its officers, employees, agents, successors and assigns.

B. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) calendar days of the date of Respondent's receipt of this Order or date of such retention, and shall condition all such contracts on compliance with the terms of this Order.

C. Respondent shall give notice to EPA thirty (30) or more days prior to transfer of ownership or operation of the Facility.

#### **IV. FINDINGS OF FACT**

##### **A. GENERAL FINDINGS OF FACT**

1. Respondent is the owner and operator of the Gibraltar Facility. The Gibraltar Facility is located along West Jefferson Avenue in Gibraltar, Michigan. See Exhibit 1.

2. Historically, the Gibraltar Facility was a cold-rolling steel manufacturing plant. The Gibraltar Facility's wastewater treatment system includes a series of basins and ponds, including an area commonly known as the "Tandem Mill Pond." The Tandem Mill Pond is an oil separation pond located south of the production building, approximately 6.2 acres in size. See Exhibit 2. Oily process water from the plant was pumped to the Tandem Mill Pond, where it was acidified to allow oil to separate from water. Water from the Tandem Mill Pond was then pumped to other National Pollution Discharge Elimination System, or NPDES-permitted wastewater treatment units for further processing prior to discharge through Outfall No. 01B into the Frank and Poet Drain. Separated oil was periodically removed by skimming, then disposed off-site. The process oils that accumulated in the Tandem Mill Pond were composed of lubricating, hydraulic, rolling, and slushing oils. They included both petroleum and animal derived materials. Non-aqueous materials in the Tandem Mill Pond generally are present in two forms--free floating oil and rag, a semi-solid, congealed emulsion of animal oils and fats, which sinks to the bottom of the Tandem Mill Pond during colder months, and rises to the surface during warmer months.

3. DSC Ltd. continues to use the Tandem Mill Pond. DSC Ltd. has identified the source of currently accumulating free oil as a plant sewer discharge pipe (oily water from plant basements) and residual oil which adheres to pond banks.

4. Respondent has placed or stored solid waste at the Tandem Mill Pond at the Gibraltar Facility.

**B. FINDINGS OF FACT REGARDING EFFECTS ON THE ENVIRONMENT**

5. On April 8, 1999, an employee of the federal government observed and/or recovered the remains of fifteen (15) dead or dying migratory birds at the Tandem Mill Pond. All of the observed bird mortalities appear to be as the result of exposed oil waste at the Tandem Mill Pond.

6. On April 8, 1999, an employee of the federal government noted that at the Tandem Mill Pond, oil wastes had floated to the surface of the water and formed a layer of oily waste.

7. In May 1999, DSC Ltd. removed 38,500 gallons of oil and rag from the Tandem Mill Pond.

8. Oil will continue to accumulate on the surface of the Tandem Mill Pond as long as rag remains in the Tandem Mill Pond, and oily water is discharged to the Tandem Mill Pond.

**V. CONCLUSIONS OF LAW**

A. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

B. Wastes at the Tandem Mill Pond located at the Gibraltar Facility are solid wastes as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27).

C. Respondent has contributed or is contributing to the handling, storage, treatment or disposal of solid waste at the Tandem Mill Pond.

D. Respondent's past or present handling, storage, treatment, transportation or disposal of solid waste at the Gibraltar Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

**VI. ORDER**

Based on the above and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect health or the environment. EPA, therefore, hereby orders Respondent to perform as specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order,

including all documents incorporated herein pursuant to this Order, and all applicable laws.

## **VII. WORK TO BE PERFORMED**

### **A. IMMEDIATE EMERGENCY MEASURES**

Within five (5) days of receiving this Order by facsimile or any other means, Respondent shall take immediate measures to stop the exposure of migratory birds to solid wastes at the Tandem Mill Pond. Such immediate measures may include, but are not limited to, physical barriers and audio or visual distractions designed to deter and discourage birds from landing at the Tandem Mill Pond.

### **B. CONTINUING EMERGENCY MEASURES**

1. Within fifteen (15) calendar days of the effective date of this Order, Respondent shall submit to EPA for approval a Continuing Emergency Measures Workplan ("CEM Workplan") that proposes Continuing Emergency Measures necessary to protect wildlife or wildlife habitat from any harmful effects of solid waste at the Gibraltar Facility, including the Tandem Mill Pond, and that describes the emergency measures that Respondent has implemented pursuant to Section VII.A., above.
  - a. Continuing Emergency Measures shall include, but not be limited to, a method for permanently and continuously eliminating contact by wildlife with any solid waste, including any oily surfaces, at the Tandem Mill Pond.
  - b. The CEM Workplan shall describe:
    - (1) the selected Continuing Emergency Measures;
    - (2) the procedures and a schedule for implementation; and
    - (3) an operations and maintenance plan, which, if followed, will result in uninterrupted effectiveness of the chosen Continuing Emergency Measure(s).
2. EPA shall notify Respondent in writing of any comments EPA may have on the CEM Workplan and schedule. If EPA

determines that the CEM Workplan, including the schedule, is approvable, EPA will provide written approval of the CEM Workplan and schedule to Respondent. If EPA has comments on the CEM Workplan and/or schedule, EPA shall provide its comments in writing to Respondent. Within seven (7) days of receiving EPA's comments, Respondent shall incorporate those comments into the CEM Workplan and resubmit the CEM Workplan to EPA.

3. Concurrently with resubmitting to EPA the CEM Workplan incorporating EPA's comments, Respondent shall begin implementation of the Continuing Emergency Measures required in the CEM Workplan, and shall complete all Continuing Emergency Measures in accordance with the schedule approved in the CEM Workplan.
4. Within fifteen (15) calendar days of completing the Continuing Emergency Measures required in the CEM Workplan, Respondent shall provide a written report (Continuing Emergency Measures Implementation Report) to EPA for approval detailing and confirming the completion of the activities conducted pursuant to the CEM Workplan.

#### C. MONITORING AND REPORTING

During implementation of any actions taken pursuant to Section VII of this Order, Respondent shall submit a report by the fifteenth of every month describing all activities that have been taken pursuant to this Order during the prior month as well as all sampling and monitoring results.

#### VIII. ACCESS

A. Respondent shall permit full site access to EPA, Department of Interior ("DOI") and the State of Michigan, and their authorized representatives for the purposes of oversight of and implementation of this Order.

B. Respondent shall use its best efforts to assure that EPA, DOI and the State of Michigan personnel or authorized representatives are allowed access to any laboratory utilized by Respondent in implementing this Order.

#### IX. GENERAL PROVISIONS

- A. Respondent shall submit a notice of intent to comply on or before the effective date of this Order.
- B. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.
- C. Within ten (10) days of the effective date of this Order, Respondent shall notify EPA, in writing, of the name, title, and qualifications of the personnel and contractors to be used in carrying out the work required by Section VII of this Order. Respondent shall demonstrate to EPA that each proposed contractor possesses all appropriate qualifications.
- D. Respondent shall obtain any permits or approvals which are necessary to perform work on or outside the refinery under applicable law and shall submit timely applications and requests for any such permits and approvals.
- E. Respondent shall employ sound scientific, engineering, and construction practices and principles under this Order.

#### **X. AVAILABILITY AND RETENTION OF INFORMATION**

- A. The administrative record supporting this Order shall be available for public review at the United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., 7th Floor, Chicago, Illinois 60604 from 8:00am to 4:30pm, every federal business day.
- B. Respondent shall make available to EPA, and shall retain, during the pendency of this Order and for a period of three (3) years after its termination, all records and documents in Respondent's possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.
- C. After the three (3) year period of document retention, Respondent shall notify EPA and the State at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by EPA or the State of Michigan, shall deliver the documents to EPA or the State of Michigan.
- D. Respondent may assert confidentiality claims pursuant to 40

C.F.R. Part 2.

E. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondent.

#### **XI. QUALITY ASSURANCE**

A. Respondent shall use quality assurance, quality control, data validation, and chain of custody procedures for all data gathered under this Order in accordance with EPA SW-846, Third Edition, or subsequent edition as then in effect.

B. Respondent shall, upon EPA request, provide for analysis by EPA of samples submitted for quality assurance monitoring by the laboratory(ies) performing analyses required by this Order.

C. Respondent shall make available to EPA and the State of Michigan the results of all sampling and/or tests or other data generated by Respondent with respect to the implementation of this Order.

D. At the request of any party, the parties shall allow split or duplicate samples to be taken by the requestor or their authorized representatives, of any samples collected by any party to this Order. Respondent shall notify EPA no less than fourteen (14) days in advance of any sample collection activity conducted pursuant to Section VII.

#### **XII. NOTICES**

Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below:

As to the United States:

Ms. Diane Sharrow (DRE-9J)  
RCRA Project Manager  
Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604  
As to the State:

JoAnn Merrick, Chief  
Enforcement Program Section  
Waste Management Division  
Department of Environmental Quality  
State of Michigan  
P.O. Box 30241  
Lansing, MI 48909

If the date for submission of any item or notification required by this Order falls upon a weekend or State or Federal holiday, the time period for submission of that item or notification is extended to the next Federal working day following the weekend or holiday.

#### **XIII. RESERVATION OF RIGHTS**

A. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary.

B. This Order shall not be construed as a waiver of limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.

C. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.

D. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable State or Federal law or regulation, and any condition of any permit issued under the Act or any other applicable law or regulation.

#### **XIV. FAILURE TO COMPLY**

Any failure by Respondent to comply with this Order shall subject Respondent to civil penalties of not more than \$5,500.00 for each day of each failure to comply with this Order. Section 7003(b) of the Act, 42 U.S.C. § 6973(b), and the May 9, 1997, Memorandum "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt



Collection Improvement Act of 1996)".

**XV. OPPORTUNITY TO CONFER AND MODIFICATION**

A. Respondent has the opportunity to confer informally with EPA concerning the terms and applicability of this Order. If Respondent desires a conference, Respondent must contact EPA Region 5 to schedule such a conference within three (3) calendar days of receipt of this Order.

B. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the Order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondent.

C. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

**XVI. EFFECTIVE AND TERMINATION DATES**

A. This Order shall become effective at 4:00pm (Central Standard Time) on the fifth (5) calendar day after the date Respondent receives a copy of the executed Order by facsimile or any other means.

B. This Order shall terminate upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the requirements of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, but not including record retention, have been satisfactorily completed.

IT IS SO ORDERED:

For the United States Environmental Protection Agency, Region 5

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joseph M. Boyle, Chief  
Enforcement and Compliance  
Assurance Branch

EXHIBITS

EXHIBIT 1: Map of Gibraltar Facility

EXHIBIT 2: Map of Tandem Mill Pond